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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/142,471	11/04/1998	STEFAN ROSE-JOHN	012627-009	2240

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EXAMINER

O HARA, EILEEN B

ART UNIT	PAPER NUMBER
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1646

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DATE MAILED: 06/10/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Applicati n No.

09/142,471

Applicant(s)

ROSE-JOHN, STEFAN

Examin r

Eileen B. O'Hara

Art Unit

1646

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 24 May 2002 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY [check either a) or b)]**

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on 24 May 2002. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: would

3. ☒ Applicant's reply would overcome the following rejection(s): 35 USC 112 first and second paragraph rejections.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: \_\_\_\_\_.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: 1-4, 6-9 and 11.

Claim(s) withdrawn from consideration: 5.

8. ☐ The proposed drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☒ Other: see attachment

  
LORRAINE SPECTOR  
PRIMARY EXAMINER

Art Unit: 1646

If the amendment had been entered, new rejections under 35 U.S.C. 112 second paragraph would be made over the amended claims. Also, if claim 6 were canceled as in the proposed amendment on page 4, claims 7-9, 11 and 12 would be objected to as depending from a canceled claim.

Applicant is also reminded that claim 10 was previously canceled in the preliminary amendment filed Nov. 4, 1998.

Response to arguments over rejection under 35 U.S.C. 103

Applicant's arguments have been fully considered but are not deemed persuasive. Applicant argues on page 8 that Sui et al. only discloses the separate administration of IL6 and IL6-receptor, however Sui et al. teaches the administration of the IL-6/IL-6R **complex** (for example, see the sentence bridging the first and second columns on page 2860), and even if IL-6 and IL6-R were added separately, they would still form a complex before activating the cells. Applicant also argues on pages 8-9 that the purpose of Wong et al. is to provide a MCH-peptide complex in which the MCH molecule and the peptide are positioned such that they can active T-cells, and is completely different from the presentation of a cytokine complexed with a cytokine receptor, but this is not different, since the point of linking IL-6 and IL-6R is to also position them to activate the cells more effectively. Applicant also argues on page 9 that they surprisingly found that the effects of a conjugate of IL-6 and IL-6R are increased dramatically over the effects of the two polypeptides separately, however, Sui et al also found that a complex of IL-6 and IL-6R had increased activity over the individual polypeptides (see Table 1, first three lines of the Table). Therefore, the rejection is maintained.